

Appln. No.: 09/936,638  
Attorney Docket No. 10543-032

## **II. Remarks**

In response to the Office Action mailed September 9, 2004, kindly enter the foregoing amendment and consider the following remarks.

Pursuant to 37 C.F.R. §1.112 Applicants request reconsider of each and every ground of rejection set forth in the Office Action.

The Office Action and the references cited therein have been carefully considered. In this Amendment, claim 1 has been amended, claims 2-11 are pending and are at issue herein. In view of these amendments and the following remarks, favorable reconsideration of this application is requested.

### **EXAMINER INTERVIEW**

The Applicants would like to thank the Examiner for extending the courtesy of conducting an interview over the telephone on November 9, 2004. The undersigned and the Examiner discussed the issues outlined in the Interview Request Form filed on October 14, 2004. In sum, the Examiner agreed that the term "switching valve" is definite, that the Fuhrer, Kahl and Cornell references are unavailable as prior art, and that the Oyama reference does not anticipate independent claim 1.

The Applicants provided the Examiner with a copy of the Transmittal Letter concerning a filing under 35 U.S.C. § 371, which confirms that an English translation of the International application as filed was provided to the U.S. Patent Office upon filing of the present application. Based on the priority date entitled to the present application, neither the Fuhrer reference nor the Kahl reference nor the Cornell reference can be applied under 35 U.S.C. § 102 against the present application. The Examiner also agreed that no further translation is required.

With regard to the Oyama reference, the Examiner and the undersigned discussed how the Oyama reference utilizes two pressure sensors positioned downstream from the master cylinder, one of the sensors having a zero-point temperature drift function. The Oyama reference then utilizes the difference between these two pressure sensors to estimate fluid viscosity. The Examiner agreed that the Oyama reference does not anticipate the elements of claim 1,

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including the step of generating a pressure build-up within time limits and at least one defined section of the brake circuit, detecting the pressure build-up, measuring at least one of the magnitude of said pressure or a time which is required to build-up said pressure and relating those measurements to viscosity. Based on the interview, favorable reconsideration is respectfully requested.

The undersigned and the Examiner also discussed minor amendment to independent claim 1 to improve the readability and clarity of the claim, but the amendment has not been made for any reason related to patentability.

#### ALLOWED CLAIMS

The Applicants would like to thank the Examiner for indicating allowed subject matter. In particular, the Examiner indicated on page 8 of the Office Action that claims 6 and 7 are allowed, and that claims 2, 8, 9 and 10 are allowable.

#### OBJECTIONS TO THE SPECIFICATION

The Examiner has objected to the term "switching valve". As noted above, this issue was discussed in the Examiner Interview and the Examiner has agreed that the term is sufficiently definite and that the objection will be withdrawn. Favorable reconsideration of this objection is respectfully requested.

#### CLAIM REJECTIONS UNDER 35 USC §102 and §103

Claim 1 has been rejected under 35 USC §102(e) as being anticipated by Fuhrer (U.S. Pat. No. 6,655,753). Claim 1 also stands rejected under 35 USC § 103(a) as being unpatentable over Kahl (U.S. Pat. No. 6,520,601). Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Cornell (U.S. Pat. No. 6,418,906) in view of the Kahl reference.

With regard to these rejections, the Applicants respectfully assert that neither the Fuhrer reference, nor the Kahl reference, nor the Cornell are available as prior art. As noted in the filing receipt of the present application, this application is a Section 371 of PCT/EP00/02347, filed March 16, 2000. Further, this international application claims priority to DE 199 11 788.8 and DE 100 11 801.1, filed March 17, 1999 and March 14, 2000 respectively. As is readily apparent from the front page of

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the Fuhrer reference, the Kahl reference, and the Cornell reference, none of these references are available as prior art under Section 102, because none of their effective filing dates precedes the priority of the present application.

For these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 based on either of the Fuhrer reference, the Kahl reference or the Cornell reference.

Claims 1, 3 and 4 stand rejected under 35 USC §103(a) as being unpatentable over Oyama (U.S. Pat. No. 6,203,123). Claim 5 stands rejected under 35 USC §103(a) as being unpatentable over the Oyama reference in view of Reinartz (U.S. Pat. No. 5,188,433).

Claim 1 recites the step of generating a pressure build-up in at least one defined section of the brake circuit. To the contrary, the Oyama reference does not teach generating a pressure build-up in a defined section of the brake circuit. Rather, the Oyama reference teaches detecting the pressure of a master cylinder in a brake system (column 3, lines 27-30). In fact, one embodiment of the Oyama reference teaches away from the present invention, and teaches a detection of pressure only when the master cylinder is not producing pressure (column 6, lines 1-10).

For these same reasons, the Oyama reference does not teach the step of detecting a pressure in the defined section. The Oyama reference does not generate or detect a pressure in a defined section. Likewise, the Oyama reference does not teach measuring the magnitude or the time required, or relating the same to viscosity.

The Applicants also traverse the Examiner's rejection inasmuch as the Examiner is relying on Figures 5 and 6 for disclosure of a predetermined pressure build-up within time limits. The only reference to Figures 5 and 6 in the Oyama reference is in the Brief Description of the Drawings section, and in column 3, lines 5-15. Notably, this latter description is in the Background of the Invention section, and merely describes how the viscosity affects the pressure "and particularly the pressure range", which thereby can affect the operation of an electromagnetic proportional pressure control valve 10 which is used to introduce fluid pressure from

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the pump circuit into the wheel cylinder 4 and to discharge said fluid pressure from the cylinder 4 into the reservoir 3 (column 1, lines 57-62). Accordingly, Figures 5 and 6 merely disclose that which is already known in the prior art, namely that viscosity affects the pressurization of fluid, which in turn affects how the electromagnetic valves which generate such a pressure should be controlled. Merely because these graphs depict pressure versus time curves, does not in any way teach, suggest or imply that the apparatus or methods taught by the Oyama reference disclose measuring a time which is required to build-up a pressure or the magnitude of a pressure build-up within certain time limits.

For these reasons and all the reasons given above, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3 and 4 over the Oyama reference.

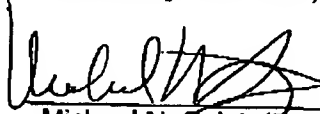
#### CONCLUSION

In view of the preceding amendments and remarks, the Applicants respectfully submit that the specification is in order and that all of the claims are now in condition for allowance. If the Examiner believes that personal contact would be advantageous to the disposition of this case, the Applicants respectfully request that the Examiner contact the Attorney of the Applicants at the earliest convenience of the Examiner.

Applicants have calculated no fees to be presently due in connection with the filing of this Paper. However, Applicants have authorized charging of any fee deficiency to the deposit account, as indicated in the Transmittal accompanying this Statement.

11/9/04  
Date

Respectfully submitted,



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